SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-372

HERBERT HARVEY,

Petitioner,

—v.—

EMILE W. SAULNIER, *et al.*,

Respondents.

REPLY BRIEF OF PETITIONER.

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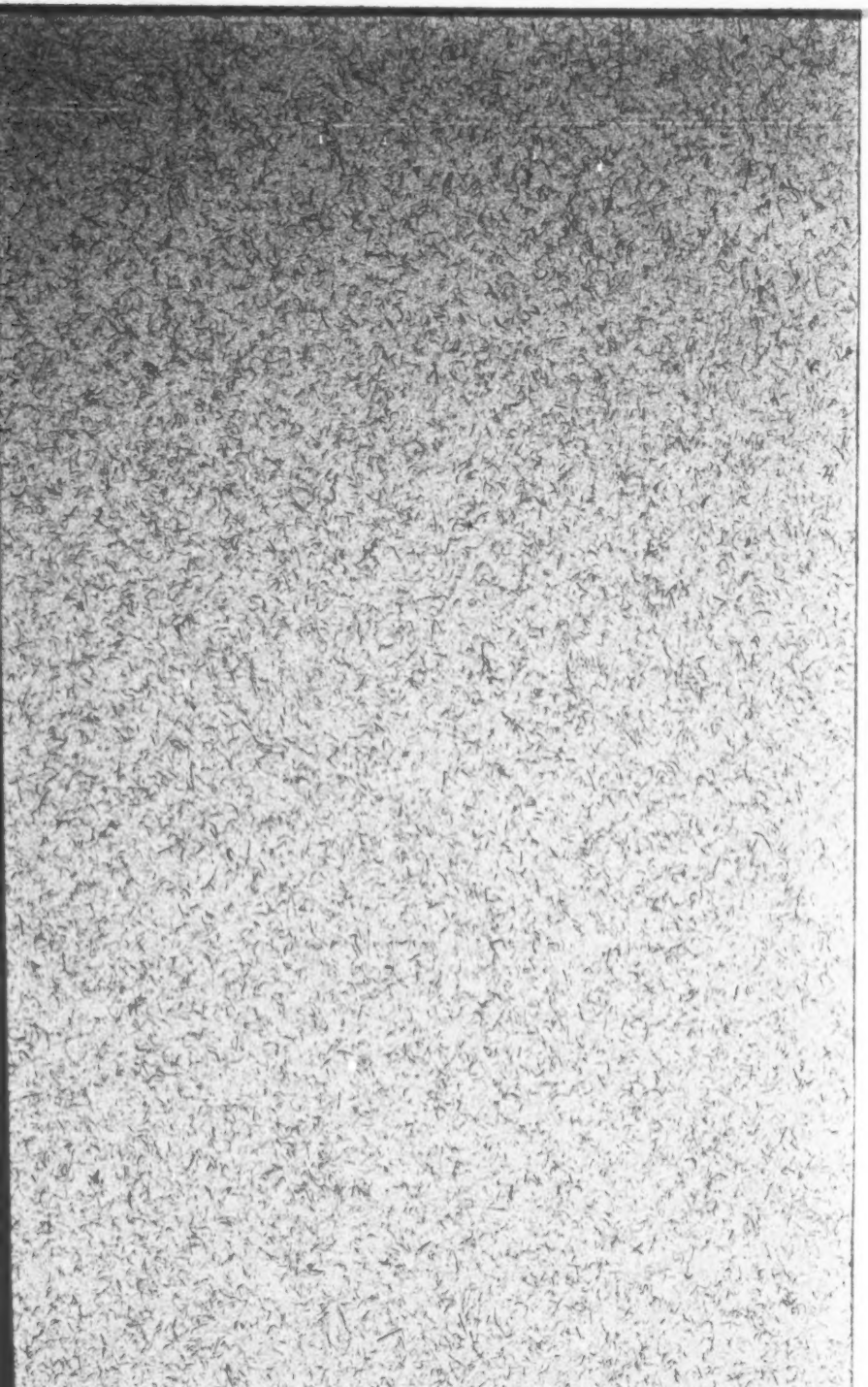

REPLY BRIEF OF PETITIONER

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Rule Cited

Rules of the Supreme Court of the United States — Rule 40 (5)

VERACITY

The Rules of Practice require that pleadings for clients be presented by attorneys admitted to practice before this court. Being officers of the court, these practitioners may be presumed to limit the representations in their briefs to what the record contains.

I am not an officer of the court, and appear pro se. In writing my Petition I was mindful of this. I continually cited the record for the facts employed in the argument. Counsel for respondents, however, relies for the facts in his brief on his credibility. This should indeed be sufficient. But it becomes painfully necessary to point out that his facts, for the most part, and substantially, are not supported by the record. Frequently they are in conflict with it.

There follow a number of quotations from Brief in Opposition filed for respondents. The quotations embrace the bulk of the factual representations of that Brief. Each is examined with reference to the record. This examination will serve to evaluate the factual basis of the Brief.

> . . . Harvey's petition . . . represents continuing harassment of the respondents . . . It is outrageous that . . . these respondents are still insecure in their respective titles to their homes, eight years after the courts of New Jersey decided that Harvey [has] no encumbrance.
>
> Since the [state court] decisions, Harvey has attempted to circumvent their effect by taking advantage of technicalities and appearing in court in various guises . . . Respondents herein continue to suffer because of his exploitation of the judicial process. Brief in Opposition - Preliminary Statement page 2.

It was respondents who waited eight years to bring the present proceeding. It was brought presumably because the state decision (not decisions) was patently void. I have not appeared in court in various guises, but only in my own name. The question raised by me in this proceeding is of the essence of due process of law. It is not a technicality. If respondents suffer title difficulties, those difficulties were not procured by me, but preceded my involvement. Petition, page 4. The Record, Exhibit DH-11 page 57a. Transcript, page 17.

> The Supreme Court of New Jersey did not base its decision solely on the equities involved, but rather based its decision on public policy which, the Court states, was to support tax titles - "a

policy which overall is burdened by the conduct before us." 42 N J at page 95. Brief in Opposition - Preliminary Statement page 4.

There was no tax title to the properties of respondents. It is probable that the state court would not have made the mistake of saying there was if I had been before it in the matter from which the foregoing quotation is taken. No evidence was introduced in district court of any tax title affecting the lands in question. Transcript, passim. Some evidence was introduced to the contrary.*

> Were this court to grant certiorari . . . individuals such as Harvey would be encouraged to continue their title-raiding activities which skirt the borderline of legality and offend the morality of decent men . . . Rather, certiorari should be denied . . . to demonstrate that these title-raiders cannot use the law to further their nefarious purposes, no matter how ingenious their schemes may be. Brief in Opposition - Preliminary Statement page 4.

*A tax proceeding affecting one of the properties of Bron vs. Weintraub, but none of those here involved, was pending at the time of the Hudson acquisition. Trial Exhibit DH-7 describes the property there involved. Even that claim was expunged, and the proceeding terminated, by final judgment, not appealed, (Trial Exhibits DH-9, DH-10) on December 8, 1960, being prior to the institution of the state court proceeding, Hudson vs. Saulnier, which concerned respondents. For description of the respondents' properties, see Appendix to Petition, pages 13a and following.

This language is both gratuitous and scurrilous. There is no evidence in the record to warrant it.

> Petitioner bases [the constitutional question] on his claim that the Supreme Court of New Jersey denied him due process. Brief in Opposition - Point I page 5.

I never appeared before the Supreme Court of New Jersey in this matter. The basis of my Petition is that I was denied due process in federal courts. Petition, page 3; page 20; page 24.

> Harvey has come back to both the state and federal courts many times during the past eight years . . . Each court in turn has stripped Harvey of his cloak of martyrdom and labeled him the persecutor of both the householders and the courts. Brief in Opposition - Point I page 5.

One court has labeled me in these terms - the U.S. District Court for the District of New Jersey. It did so with no warrant in the record before it. Petition, page 16. No other court heard me.

> Harvey seeks to divorce himself from the activities of his corporate alter ego and would have the court believe that he was not in control of the litigation which has preceded this petition. The facts support the conclusion that Harvey was a party in a real sense to the proceedings. Brief in Opposition - Point I page 5.

There are no facts in our record to support such a conclusion.*

> Whatever distinctions [petitioner] may seek to make before this Court between the . . . seven householders and the remaining three householders [respondents here] can only be without a difference since they were all in the same boat and their causes are equally meritorious. Brief in Opposition - Point II page 8.

This is untrue. Petition, page 5, first footnote. In any case, counsel omits to mention what the merits of the seven are which are applicable to his clients.

The foregoing examples, which are not exhaustive, show that the facts employed by counsel in his Brief in Opposition are not derived from the record but are supplied by counsel. Perhaps the intent is to discredit Petitioner.**

*nor does the record disclose a corporate alter ego of Harvey. The Record. Transcript, passim.

**Concerning statements and allegations of fact not derived from the record, I have not discussed here the countervailing facts in each instance. It is not conceived that this court is sitting as trier of fact. I write this reply Brief on the theory that allegations not supported by the record, as well as arguments based upon them, will simply be discarded.

ARGUMENT

His reasons are as two grains of wheat
hid in two bushels of chaff . . .
- The Merchant of Venice

In the rash of abuse which comprises plaintiffs' Brief, there may be discovered two arguments.

One (page 6) says that, since I am the holder of an after-acquired mortgage, I can claim the title only in the condition in which it was acquired by my mortgagor, that is, subject to the trust.

A similar argument from the Opinion of the District Court is discussed in the Petition (page 15, ii; page 20, vii). Apart from the circumstance that no trust had been imposed until some years after the mortgages vested, I was not a party to the proceedings in state court in which the trust was imposed. If that trust were to be interpreted retroactively against me, as respondents here suggest it should be, I should have been a party so that I could have presented to the court the facts upon which its determination would turn. The cases cited by respondents do not conflict with this view. The mortgages cannot be disposed

of, on any theory, without giving the mortgagee an opportunity to be heard. Respondents' argument is therefore without merit. There was want of due process in my divestment.

The other argument is embedded in the metaphor (Brief in Opposition - Point II, page 7) in which counsel pictures himself and his clients as being at sea. They set out, 13 years ago, on a voyage through the courts to perfect title. It was argued that, apart from Harvey, this voyage would have been successfully concluded in the harbor of marketable title. A pretty allegory.

What the yarn omits is that, if respondents sought to wipe out my interest, they should have made me a party to their suit. They neglected to do so. When my mortgagor sank their galleys in the state litigation, the (present) respondents appealed. Had they expected to prevail against me, they should have named me in that appeal. They omitted that, too.

A decade later, counsel (who himself conducted that state court appeal) comes swaggering into this court, belatedly picturing his clients as victims of a piratical Harvey. There is no virtue in the conceit and no merit in the argument embedded in it.

Respondents' Point II is indeed no more than its caption - an injunction to put an end to litigation. This, to be sure, can be done by denying review. An end to litigation is always desirable. But it is not the ultimate consideration. If it were, no decision would be reviewed in any circumstances. My Petition urges review on meritorious and what I believe to be compelling grounds.

Respondents' Brief in Opposition does not actually engage the proposition of the Petition. The argument of the Petition is that a determination of a state court, in a matter in which I was not before it, has been employed here in federal court, where it was inadmissible, to divest me; and that this is not due process of law.

Respondents' position in their Brief in Opposition, so far as it can be disentangled from vituperation, seems to be that my argument must be rejected because of what the state courts said in that matter in which I was not before them. But this is an absurdity. What the state courts said cannot be used to determine whether what they said is or is not admissible in a later proceeding.

SCANDAL

The main thrust of respondents' Brief to this court is - it appears on page after page - that petitioner Harvey is a scoundrel.

No evidence is cited, or is found in the record, in support of this proposition. It is slander.

The rules of this court prescribe that briefs shall be free of scandalous matter. Respondents' Brief notably fails to conform.

The Rule in question, Rule 40 (5), persuades me that the court will not adhere to a jurisprudence in which that party who calls his adversary the worst names will thereby prevail. Respondents' Brief in Opposition may well be disregarded by the court.